

Federal Acquisition Regulation

22.406-7

applicable to the classification of the work actually performed.

22.406-5 Subcontracts.

In accordance with the requirements of the clause at 52.222-11, Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

22.406-6 Payrolls and statements.

(a) *Submission.* In accordance with the clause at 52.222-8, Payrolls and Basic Records, the contractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission.* If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) *Examination.* (1) The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

- (i) The correctness of classifications and rates;
- (ii) Fringe benefits payments;
- (iii) Hours worked;
- (iv) Deductions; and
- (v) Disproportionate employment ratios of laborers, apprentices, or trainees, to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the

particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reasons, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

22.406-7 Compliance checking.

(a) *General.* The contracting officer shall make checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirement of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See Standard Form 1445.)

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(c) *Special compliance checks.* Situations that may require special compliance checks include—

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information.

22.406-8 Investigations.

Conduct labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

(a) *Contracting agency responsibilities.* Conduct an investigation when a compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(1) The investigation must—

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(3) Send a written request to the Administrator, Wage and Hour Division, to obtain—

(i) Investigation and enforcement instructions; or

(ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of back wages due, to anyone other than Government contract administrators.

(b) *Investigation report.* The contracting officer must review the investigation report on receipt and make preliminary findings. The contracting officer normally must not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of non-compliance.

(c) *Contractor notification.* After completing the review, the contracting officer must—

(1) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for unpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(d) *Contracting officer's report.* After taking the actions prescribed in paragraphs (b) and (c) of this subsection—